

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN A. HIRSCH AND RONALD W. ZOLLA,
Individually and as officers, directors, and
shareholders of ZHL, Inc. and ZHL, Inc.

Plaintiffs,

v.

MICHAEL LAMENSDORF and
KATHY LAMENSDORF, Individually and
as shareholders of ZHL, INC.,

Defendants.

Civil Action
No. 05-10902-DPW

**MOTION TO EXTEND TIME TO RESPOND TO DEFENDANT'S "MOTION TO
DISMISS OR, IN THE ALTERNATIVE, TO STAY ACTION**

The plaintiffs in this matter herewith move for an extension of time to respond to the Motion to Dismiss which the defendants have filed. In support of their motion, the plaintiffs state:

1. Concurrently herewith, the plaintiffs have moved to remand this case to the state court for lack of diversity. As discussed in the Affidavit of John A. Hirsch, submitted concurrently therewith, the plaintiff ZHL is a Massachusetts corporation with a principal place of business in Florida. Accordingly, it is non-diverse as to the defendants, who are Florida residents.

2. It is axiomatic that jurisdictional issues must be dealt with as soon as they are noticed. See, e.g., Wisconsin Dep't of Corrections v. Schacht, 524 U.S. 381, 389 (1998). To respond to the Motion to Dismiss prior to a resolution of whether this case is

within the Court's subject matter jurisdiction would be wasteful of both party and judicial resources.

3. The plaintiffs have requested an extension of time from the defendants, but as shown by the letter attached hereto as Exhibit A, the defendants have refused.

WHEREFORE, the plaintiffs herewith move that this Honorable Court:

- A. Grant them an enlargement of ten (10) days after the Court issues a decision on the plaintiffs' Motion to Remand, submitted concurrently herewith to respond to the defendants' Motion to Dismiss, or, In the Alternative, Motion to Stay"; and/or
- B. Grant whatever other or additional relief this Honorable Court deems just under the circumstances.

Respectfully submitted,

JOHN A. HIRSCH, RONALD W. ZOLLA,
and ZHL, INC.

By their Attorneys,

_____/s/ Edward Foye_____
J. Owen Todd (BBO # 499480)
Edward Foye (BBO #562375)
TODD & WELD LLP
28 State Street, 31st Floor
Boston, MA 02109
617-720-2626

Dated: May 23, 2005

Certificate of Compliance with L.R. 7.1

I, Edward Foye, state that I spoke with Matthew Miller, attorney for the defendants, about the matter raised in the foregoing motion on May 13, 2005, as reflected in the correspondence attached hereto as Exhibit A.

_____/s/ Edward Foye_____



FOLEY
HOAG LLP
ATTORNEYS AT LAW

May 16, 2005

Matthew E. Miller
Boston Office
617) 832-3041
mmiller@foleyhoag.com

By Facsimile

Edward Foye, Esq.
Todd & Weld LLP
28 State Street, 31st Floor
Boston, MA 02109

Re: Ophnet, Inc., et al. v. Michael Lamensdorf, et al., Civ. A. No. 05-10970;
Hirsch et al. v. Lamensdorf et al., Civ. A. No. 10902

Dear Ed:

Defendants will not assent to plaintiffs' motion for extension of time and motion for entry upon land to take photographs of the Lamensdorfs' home and medical practice that plaintiffs plan to file in the above-referenced actions. I note your refusal to provide copies of the same to defendants prior to filing.

Very truly yours,



Matthew E. Miller

MEM

cc: Michael Taaffe, Esq. (by facsimile)

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